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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

ROBERT RICHARD,

Plaintiff and Appellant,

v.

HIRUY HAILE GESSESSE,

Defendant and Respondent.

B299128

Los Angeles County
Super. Ct. No. BC638048

APPEAL from a judgment of the Superior Court of Los Angeles County, Virginia C. Keeny, Judge. Affirmed.

Michael S. Traylor, for Plaintiff and Appellant Robert Richard.

Cole Pedroza, Kenneth R. Pedroza and Zena Jacobsen; Kjar, McKenna & Stockpler, Jon Schwalbach and James J. Kjar for Defendant and Respondent Hiruy Haile Gessesse.

/INTRODUCTION

After reporting he was experiencing suicidal thoughts and auditory hallucinations, Robert Richard was placed on an involuntary psychiatric hold at Mission Community Hospital from August 25 to September 2, 2016, pursuant to Welfare and Institutions Code sections 5150 and 5250. He was treated at the hospital by Hiruy Haile Gessesse, M.D. On August 31, 2016, Richard became physically and verbally aggressive toward hospital staff. Consequently, staff members took him down to the ground, gave him an injection containing several medications, and placed him into physical restraints for about one hour. Dr. Gessesse was not present. After he was discharged, Richard sued Dr. Gessesse for professional negligence, seeking to recover damages for injuries allegedly sustained during the August 31 incident.

Dr. Gessesse filed a motion for summary judgment. He argued Richard's claim had no merit because Richard could not prove: (1) the psychiatric treatment he rendered to Richard fell below the standard of care; or (2) any act or omission on his part caused Richard's injuries. The trial court granted summary judgment. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Richard's operative complaint alleged the August 31 incident arose when hospital staff "agitate[d], tease[d] and taunt[ed]" him after he asked when he was going to be discharged. Richard alleged he responded by "utter[ing] an expletive" towards them, which triggered the incident. The complaint further alleged that during the incident, hospital staff punched and kicked Richard numerous times on multiple body

parts, touched his buttocks in a sexual fashion, and injected him with unnecessary medication. In addition to claims against other defendants,¹ the complaint asserted a single cause of action for professional negligence against Dr. Gessesse. In support of this claim, Richard alleged Dr. Gessesse breached the duty of care owed to him in 16 different ways.²

Dr. Gessesse moved for summary judgment, arguing Richard's claim failed as a matter of law because he could not establish two of the elements required to prevail on a professional negligence claim. Specifically, Dr. Gessesse contended: (1) he "at all times complied with the applicable standard of care in relation to the treatment and care of [Richard]"; and (2) "no act or

1 Richard also sued Mission Community Hospital Foundation, Mission Community Hospital, Deanco Healthcare, LLC, and Deanco Healthcare Panorama City, LLC for assault, battery and sexual battery, intentional infliction of emotional distress, and professional negligence. These other defendants are not parties to the current appeal, which solely pertains to Richard's professional negligence claim against Dr. Gessesse.

2 Richard alleged Dr. Gessesse breached the duty of care owed to him by failing to provide him with a "reasonable, accurate, and proper" intake process, screening process, process for consulting other physicians and/or reviewing his medical records, diagnosis, prognosis, information about his medical condition and treatment options, counseling and therapy for his condition, and medication for his condition. Richard also alleged Dr. Gessesse failed to monitor or supervise him adequately and monitor how he was being cared for by hospital staff; prescribed incorrect and harmful medications; sedated him in a manner that worsened his condition; and allowed improperly trained and/or unqualified staff members to make decisions about and provide his treatment.

omission by [Dr. Gessesse] caused or contributed to any injury allegedly suffered by [Richard].” In support of his arguments, Dr. Gessesse relied on the declaration of David Braff, M.D.

In opposition, Richard argued Dr. Gessesse failed to carry his burden on summary judgment because he did not address each and every allegation of breach set forth in his complaint. Richard also argued Dr. Braff’s declaration was deficient because it was unsupported by his medical records or any reasoned explanation.

Along with his opposition, Richard asserted numerous other evidentiary objections to Dr. Braff’s declaration.³ But Richard did not offer any evidence.

The trial court rejected Richard’s argument that Dr. Braff’s declaration was insufficient,⁴ reasoning: “The declaration establishes Dr. Braff as an expert, establishes the material relied upon, spells out the facts relied upon, spells out the standard of care[,] and gives a reasoned explanation for opining that Dr.

3 For example, Richard asserted numerous paragraphs in Dr. Braff’s declaration were impermissibly predicated on hearsay, lacked foundation, and were vague and ambiguous.

4 The record is unclear whether the trial court ruled on these evidentiary objections to Dr. Braff’s declaration. The trial court did not address the objections in its written order granting Dr. Gessesse’s motion for summary judgment. Because a transcript of the hearing on the motion has not been provided, we cannot determine whether the trial court orally ruled on the objections. In any event, on appeal, Richard does not raise any arguments pertaining to these objections or the trial court’s possible failure to rule on them. Any such challenge therefore has been forfeited. (See *City of Eureka v. Superior Court* (2016) 1 Cal.App.5th 755, 765.)

Gessesse complied with the standard of care and did not cause [Richard's] damages." Accordingly, after summarizing Dr. Braff's declaration, the trial court determined Dr. Gessesse satisfied his burden on summary judgment. The trial court further noted Richard did not submit any counter declarations or other evidence demonstrating the existence of any disputes of material fact. Consequently, the trial court granted summary judgment in favor of Dr. Gessesse.

Richard timely appealed.

DISCUSSION

I. Standard of Review

"A party is entitled to summary judgment only if there is no triable issue of material fact and the party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment must show that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense. (*Id.*, subd. (p)(2).) If the defendant meets this burden, the burden shifts to the plaintiff to present evidence creating a triable issue of material fact. (*Ibid.*) A triable issue of fact exists if the evidence would allow a reasonable trier of fact to find the fact in favor of the party opposing summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 [citation.]

"We review the trial court's ruling on a summary judgment motion de novo, liberally construe the evidence in favor of the party opposing the motion, and resolve all doubts concerning the evidence in favor of the opponent. (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460 [citation.]) We must affirm a summary judgment if it is correct on any of the grounds asserted in the trial court, regardless of the trial court's stated

reasons. [Citation.]” (*Grebing v. 24 Hour Fitness USA, Inc.* (2015) 234 Cal.App.4th 631, 636-637.)

II. Governing Principles for Professional Negligence

To succeed on a professional negligence claim, the plaintiff must prove the following elements: “(1) a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a breach of the duty; (3) a proximate causal connection between the negligent conduct and the injury; and (4) resulting loss or damage.” [Citation.]” (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968.)

Where, as here, “the conduct required of a medical professional is not within the common knowledge of laymen, a plaintiff must present expert witness testimony to prove a breach of the standard of care. [Citations.] [The] [p]laintiff also must show that [the defendant’s] breach of the standard of care was the cause, within a reasonable medical probability, of his injury. [Citation.]” (*Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 509 (*Bushling*).)

III. Dr. Gessesse is Entitled to Summary Judgment

Richard contends Dr. Gessesse was not entitled to summary judgment because he failed to address individually all 16 allegations of breach, and therefore did not address all the theories of liability set forth in the complaint.⁵ Richard also

⁵ Richard actually contends the complaint contains 36 allegations of breach pertaining to Dr. Gessesse. Twenty of the allegations identified, however, specifically concerned breaches of the standard of care by the “Deanco Defendants.” As expressly

argues the trial court erred by relying on Dr. Braff's declaration in granting summary judgment, as the declaration is conclusory and unsupported by facts.

Dr. Gessesse responds that Richard "appears to misunderstand, and thus misconstrue, a defendant's burden on summary judgment." Specifically, Dr. Gessesse acknowledges that although he needed to address all theories of liability alleged, he was not required to "address[] all factual allegations sentence by sentence as [Richard] implies[.]" Rather, Dr. Gessesse argues he only needed to show Richard "could not establish one or more elements of a professional negligence claim." Accordingly, Dr. Gessesse contends he has met his burden because Dr. Braff's well-reasoned declaration demonstrates Richard cannot prove breach of the applicable standard of care or causation. We agree with Dr. Gessesse.

In his declaration, Dr. Braff states he is licensed to practice medicine in California, and is board certified in Psychiatry and Neurology. He has treated over 20,000 patients. He is currently the director of the Schizophrenia Program at University of California, San Diego, where he is a distinguished professor. He is also the director of the NIMH Consortium on Genetics of Schizophrenia. Based on his education, training, and experience, Dr. Braff is familiar with the standard of care applicable to psychiatrists treating patients placed on involuntary psychiatric holds pursuant to Welfare and Institutions Code sections 5150 and 5250.

Dr. Braff states he reviewed Richard's operative complaint, the transcripts of the depositions of Richard and the nurses who

defined in the complaint, that term referred collectively to the other defendants in the case and did not include Dr. Gessesse.

treated him, records from the Los Angeles Police Department concerning the August 31 incident, written discovery and the responses thereto, Mission Community Hospital's procedures and policies, and the medical records describing Richard's treatment and care rendered to him at Mission Community Hospital.⁶ Based on these records, Dr. Braff sets forth the facts relevant to his opinion as follows.

On August 24, 2016, Richard went to the West Valley Mental Health Center and reported having increased depression and suicidal ideation. Richard stated he wanted to "blow [his] brains out" and that he "couldn't hold it together anymore." He also reported having a history of substance abuse, psychiatric hospitalization, suicide attempts, trauma, and hallucinations. The nurse who assessed him determined Richard to be a danger to himself. Consequently, Richard was placed on an involuntary psychiatric hold pursuant to Welfare and Institutions Code section 5150 and transferred to Olive View Medical Center. The next day, Richard was admitted to Mission Community Hospital's Behavioral Health Unit.

Upon Richard's admission to Mission Community Hospital, Dr. Gessesse performed a psychiatric evaluation and diagnosed Richard with paranoid schizophrenia. During the evaluation, Richard reported "feeling suicidal." Consequently, Dr. Gessesse developed a treatment plan requiring Richard to stay in the hospital for five to seven days.

On August 26 and 27, 2016, Nurse Practitioner Cordelia Rose Onyekwe evaluated Richard. On both dates, Richard

⁶ Dr. Gessesse also submitted copies of these documents in support of his motion for summary judgment.

continued to report having suicidal thoughts and hearing voices. Richard also stated he felt depressed, and appeared withdrawn and isolative. NP Onyekwe recommended Richard receive treatment consisting of daily doses of Zoloft, one shot of Invega to be received within the next five to seven days and then monthly thereafter, and therapy. NP Onyekwe discussed her treatment recommendations with Dr. Gessesse.

Dr. Gessesse examined Richard again on August 28, 2016. Richard continued to report feeling anxious and depressed, and was still “having active suicidal thoughts with a plan to blow his brains out.” Accordingly, Dr. Gessesse determined Richard should not be discharged to a lower level of care; he recommended Richard remain hospitalized and continue to receive medication and therapy. The next day, Richard’s symptoms largely remained the same, and hospital staff continued his course of treatment.

On August 31, 2016, Richard began yelling and attacking staff. Consequently, Richard was taken down to the ground by two hospital staff members and given an injection of Ativan, Haldol, and Benadryl, which was ordered and approved by NP Onyekwe. Richard continued to display aggressive behavior after receiving the injection, and attempted to assault staff members as they were leaving his room. Thus, he was placed in restraints, which were later removed when he appeared calm, quiet, and resting.

On September 2, 2016, Dr. Gessesse discharged Richard to Didi Hirsch Mental Health Services Center for follow-up care. At the time of discharge, Richard reported he did not have suicidal or homicidal ideation, auditory or visual hallucinations, or paranoid delusions.

After summarizing Richard's course of treatment and care based on the records reviewed, Dr. Braff sets forth the standard of care applicable to psychiatrists treating patients placed on an involuntary psychiatric hold. Specifically, Dr. Braff states the standard of care requires a psychiatrist to: (1) "timely and appropriately assess a patient's condition upon admission in order to evaluate his potential to pose a danger to himself or others"; (2) "provide appropriate treatment recommendations attendant to the patient's condition, including but not limited to the administration of medication and other treatment modalities commensurate with [the patient's] psychiatric condition"; and (3) "evaluate the patient's safety and suitability for discharge throughout the hospital course, and . . . adjust any discharge plan accordingly."

Dr. Braff then opines Dr. Gessesse complied with the standard "at all times . . . in relation to the treatment and care rendered to [Richard]." Specifically, Dr. Braff opines Dr. Gessesse properly: (1) "performed a timely and appropriate evaluation of [Richard] upon admission to Mission Community Hospital"; (2) "continued to appropriately monitor [Richard's] condition throughout his hospital course"; (3) "ordered the administration of appropriate medications in amounts and at intervals appropriate to achieve the desired therapeutic effect"; (4) "provided encouragement and supportive therapy intended to address [Richard's] psychiatric condition"; and (5) "continue[d] [Richard's] hold and refrain[ed] from ultimately discharging [him] until after his suicidal ideation abated, and his homicidal thoughts[] and hallucinations had subsided[.]"

Dr. Braff further opines that, "to a reasonable degree of medical probability, no act or omission on the part of Dr.

Gessesse caused or contributed to any injury alleged by [Richard].” Dr. Braff notes that Dr. Gessesse did not order the intramuscular injection of medication given during the August 31 incident. He also states Richard’s records do not indicate Dr. Gessesse ordered, directed, or participated in Richard’s “take down” on August 31, 2016 or any other physical altercation with Richard. Nor do the records support a finding that “Dr. Gessesse was aware of, approved of, ordered, or directed any inappropriate conduct toward [Richard] or any other patient at any time.”

Having reviewed Dr. Braff’s declaration, we reject Richard’s argument that the trial court should have excluded it because his conclusions were unsupported by specific facts or reasoned explanations. Our Supreme Court has not resolved the standard of review for summary judgment evidentiary rulings (see *Reid v. Google., Inc.* (2010) 50 Cal.4th 512, 535), but “[a]ccording to the weight of authority, appellate courts ‘review the trial court’s evidentiary rulings on summary judgment for abuse of discretion. [Citations.] . . . ’ [Citations.]” (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 852.) We find no error under either a de novo or abuse of discretion standard.

In support of his argument, Richard relies on *Doe v. Good Samaritan Hospital* (2018) 23 Cal.App.5th 653 (*Doe*). In *Doe*, the plaintiff was admitted to the hospital due to suicidal and homicidal ideations. (*Doe, supra*, 23 Cal.App.5th at p. 657.) During his stay, the hospital assigned another patient, K.W., to share a room with the plaintiff. (*Id.* at p. 658.) K.W. sexually assaulted the plaintiff in the bathroom on the second night they shared a room. (*Ibid.*) The plaintiff sued the hospital for negligence, alleging it “was negligent in its assessment of its patients, by housing [the plaintiff] and K.W. in the same room, by

limiting observation of K.W. to every 15 minutes, and failing to provide supervision of K.W. at all times.” (*Id.* at pp. 658-659.) The hospital filed a motion for summary judgment, which was supported by a declaration from a registered nurse. (*Id.* at p. 659.) The trial court granted the hospital’s motion, finding the nurse’s un rebutted declaration sufficient to demonstrate the hospital did not breach the duty of care owed to the plaintiff, and that no negligent act on the hospital’s part caused the plaintiff’s injury. (*Id.* at p. 660.)

The Court of Appeal reversed, holding the nurse’s declaration, which was “little more than three pages,” failed to demonstrate the hospital complied with the standard of care by assigning K.W. to share a room with the plaintiff, and by conducting observations at 15-minute intervals. (*Doe, supra*, 23 Cal.App.5th at pp. 655, 664-666.) In support of its holding, the court emphasized the nurse’s declaration did not describe the standard of care applicable to determining the proper observation level for a patient, or how room placements were made. (*Id.* at pp. 665-666.) The court further noted the nurse did not set forth the facts and reasoning on which her conclusions were based; for example, she did not describe what the hospital’s policies and practices required in terms of patient surveillance, and did not explain how those protocols fell within the standard of care. (*Ibid.*) Thus, the court found the nurse’s declaration was of “no significant evidentiary value” and concluded it could not “determine whether the standard of care was satisfied as a matter of law.” (*Id.* at p. 666.)

This case is distinguishable from *Doe*. Here, as the trial court correctly observed, Dr. Braff’s 12-page declaration describes his qualifications and expertise, the materials he reviewed, and

the facts he derived from those materials and relied upon in formulating his opinions. Moreover, Dr. Braff clearly sets forth the applicable standard of care. He provides detailed and thorough explanations for his conclusions that Dr. Gessesse complied with the standard of care while treating Richard, and that no actions or omissions on Dr. Gessesse's part caused Richard's alleged injuries. Thus, we conclude Dr. Braff's declaration is not a generalized, conclusory approval of Dr. Gessesse's actions as Richard contends. (See *Bushling, supra*, 117 Cal.App.4th at p. 509 [expert's conclusion regarding lack of medical malpractice is not conclusory where expert states he reviewed plaintiff's medical records and, based thereon and his own experience, found no evidence to support plaintiff's claim].) Rather, we agree with the trial court that Dr. Braff's declaration sufficiently establishes Dr. Gessesse: (1) did not breach the duty of care owed to Richard any time or in any way during the course of Richard's psychiatric treatment and care; and (2) was not involved in the August 31 incident in any manner, and thus did not cause any of Richard's alleged injuries.

Additionally, we are not persuaded by Richard's argument that Dr. Gessesse was not entitled to summary judgment because he failed to address individually each of the allegations of breach asserted in the complaint, and therefore did not demonstrate Richard cannot succeed on all of theories of liability pled. Richard correctly observes that "[i]f a plaintiff pleads several theories, the defendant has the burden of demonstrating there are no material facts requiring trial on any of them. . . ." [Citation.] (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 164.) By submitting Dr. Braff's declaration, however, Dr. Gessesse has satisfied that burden. As noted above, Dr. Braff clearly spelled out what the

applicable standard of care required of Dr. Gessesse, and thoroughly explained how he fully complied with that standard throughout Richard's course of care and treatment at Mission Community Hospital. Consequently, regardless of the nature and number of asserted breaches set forth in the complaint, Dr. Braff's declaration sufficiently demonstrates Richard cannot establish *any* acts or omissions on Dr. Gessesse's part fell below the applicable standard of care.

In sum, we conclude Dr. Gessesse satisfied his burden to demonstrate he did not breach the duty of care owed to Richard, and did not cause any of Richard's alleged injuries. The burden therefore shifted to Richard to show a triable issue of material fact exists. (Code Civ. Proc., § 437c, subd. (p).) Richard, however, did not offer any evidence in opposition to Dr. Gessesse's motion, and therefore failed to meet that burden. Accordingly, the trial court properly granted summary judgment in Dr. Gessesse's favor.

DISPOSITION

The judgment is affirmed. Dr. Gessesse shall recover his costs on appeal.

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CURREY, J.

We concur:

MANELLA, P.J.

WILLHITE, J.